

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

DWAYNE T. HENSON
ADC #121669

PLAINTIFF

v.

No. 4:20-cv-1119-DPM-JJV

LERIZZA NUNAG, LPN, Cummins Unit

DEFENDANT

ORDER

On *de novo* review, the Court partly adopts and partly declines the partial recommendation, *Doc. 18*, and partly sustains Nunag's objections, *Doc. 19*. FED. R. CIV. P. 72(b)(3).

The Court adopts the unopposed slice of the recommendation dealing with Grievance CU-18-899. It doesn't serve to exhaust the claims in this case.

The Court declines the recommendation as to CU-18-1019. The appeal form might lead to some confusion. But administrative procedures don't have to guard against every possible misinterpretation. *Ross v. Blake*, 136 S. Ct. 1850, 1859 (2016). The Court can't say that the appeal form renders the grievance process "so opaque that it becomes, practically speaking, incapable of use" or that "no ordinary prisoner can discern or navigate it." *Ibid.* Further, while Henson did state in a notice, *Doc. 4*, that he'd had issues with Lieutenant Bass not responding to certain grievances, CU-18-1019 doesn't appear to be one of them, as it proceeded through the usual

steps in the process. *Doc. 15-4 at 4-7*. The motion for summary judgment is therefore granted as to the claims in this grievance.

Because of record issues, the Court declines the recommendation without prejudice as to CU-18-1141 and Henson's unnumbered grievance. With her objections, Nunag submitted two new papers. *Doc. 19-1 & 19-2*. They aren't accompanied by an affidavit or declaration, though. Compare *Doc. 15-5; Shanklin v. Fitzgerald*, 397 F.3d 596, 602 (8th Cir. 2005). Similarly, Henson's allegations about Lieutenant Bass are in an unsworn paper. *Doc. 4*. The Court returns the part of the motion for summary judgment about CU-18-1141 and the unnumbered grievance, *Doc. 14*, to the Magistrate Judge to settle the record, for any further needed proceedings, and for a new recommendation in due course.

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Partial recommendation, *Doc. 18*, partly adopted, partly declined, and partly declined without prejudice.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

12 May 2021